

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

RASHAN SARAD BROWN,

6:14-cv-00085-JE

Petitioner,

ORDER

v.

JEFF PREMO,

Respondent.

BROWN, Judge.

Magistrate Judge John Jelderks issued Findings and Recommendation (#30) on February 19, 2015, in which he recommends the Court dismiss Petitioner Rashan Sarad Brown's Amended Petition (#6) for Habeas Corpus. Petitioner filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(*en banc*).

Petitioner's Objections do not provide a basis to modify the Findings and Recommendation as to the issues presented in the record before the Magistrate Judge. The Court also has reviewed the pertinent portions of that record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

The Court notes, however, in his Objections (#32) Petitioner asserts for the first time that he was unable to file this action within the one-year statute of limitations in 28 U.S.C. § 2244(d) because his state post-conviction appellate attorney failed to timely notify him of the denial of his final state-court appeal. Although an attorney's failure to notify a habeas-corpus petitioner of the denial of his final state appeal can under some circumstances provide a basis for equitable tolling of the statute of limitations in § 2244(d)(see *Gibbs v. Legrand*, 767 F.3d 879 (9th Cir. 2014)), this record is insufficient to resolve that issue at this time.

CONCLUSION

The Court **ADOPTS** the analysis in Magistrate Judge Jelderks's Findings and Recommendation (#30), but on this record the Court **DECLINES TO ADOPT** Magistrate Judge Jelderks's recommendation to dismiss the Amended Petition (#6) with prejudice. The Court **REFERS** this case back to Magistrate Judge Jelderks to permit the parties to supplement the factual record and to provide supplemental briefing on the sole issue as to whether Petitioner is entitled to equitable tolling of the statute of limitations in § 2244(d) on the ground that his state post-conviction appellate counsel failed to timely notify Petitioner of the denial of his final state appeal.

IT IS SO ORDERED.

DATED this 23rd day of March, 2015.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge